

Internal Revenue Service

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Attn.

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:ITA:6
PLR-140237-08
Date:
December 19, 2008

Legend:

A =

P =

S1 =

S2 =

X =

Y =

Z =

Year 1 =

Year 2 =

Dear :

This ruling is in reply to the letter submitted by A's authorized representative that requested an extension of time under section 301.9100-1(c) of the Procedure and

Administration Regulations for A to file the required Form 970, Application To Use LIFO Inventory Method. A's request was made in accordance with section 301.9100-3.

P is the parent corporation of an affiliated group of corporations that files consolidated federal income tax returns on a calendar year basis. Included in these returns are S1 and S2.

The taxpayer, A, was formed as a partnership, with S2 owning Y percent and X, an unaffiliated corporation, owning Z percent of A. A identified its inventory, excluding chemicals, using the last-in, first-out (LIFO) inventory method. In Year 1, S1 purchased X's Z percent interest in A. This acquisition caused the technical termination of A under section 708(b)(1)(B) of the Internal Revenue Code. After S1's purchase, A collapsed its existing LIFO layers into a single layer, which became A's beginning LIFO inventory. A failed to attach the required Form 970 to its Year 1 federal tax return. However, subsequent to Year 1, A's inventory, excluding chemicals, has continually been identified using the LIFO inventory method.

A represents that it, and not the Internal Revenue Service, discovered its failure to file the required Form 970. Specifically, A states that it discovered that the Form 970 was missing when it was considering a change within its LIFO inventory method in Year 2. A also represents that it has used the LIFO inventory method for the relevant inventory for financial purposes in all relevant years.

Section 472 provides that a taxpayer may use the LIFO method of inventorying goods specified in an application to use such method filed at such time and in such manner as the Secretary may prescribe.

Section 1.472-3 of the Income Tax Regulations provides that the LIFO inventory method may be adopted and used only if the taxpayer files with its income tax return for the tax year as of the close of which the method is first to be used a statement of its election to use such inventory method. The statement shall be made on Form 970.

Under section 301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of the time to make a regulatory election under all subtitles of the Code except subtitles E, G, H, and I, provided that the taxpayer acted reasonably and in good faith and granting relief will not prejudice the interests of the Government. Section 301.9100-1(b) defines a regulatory election as an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin. Section 301.9100-1(b) also defines an election to include an application for relief in respect to tax, or a request to adopt, change, or retain an accounting method or accounting period.

Section 301.9100-2 sets forth rules governing automatic extensions for regulatory elections. If the provisions of section 301.9100-2 do not apply to a taxpayer's situation, the provisions of section 301.9100-3 may apply.

Section 301.9100-3 sets forth the standards that the Commissioner will use in determining whether to grant an extension of time to make a regulatory election that does not meet the standards of section 301.9100-2. It also sets forth information and representations that the taxpayer must furnish to enable the Service to determine whether the taxpayer has satisfied these standards. The applicable standards are whether the taxpayer acted reasonably and in good faith and whether granting relief would prejudice the interests of the Government.

Under section 301.9100-1(b)(1)(i), a taxpayer that applies for relief for failure to make an election before the failure is discovered by the Service ordinarily will be deemed to have acted reasonably and in good faith. However, the taxpayer will not be considered to have acted reasonably and in good faith if the taxpayer seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under section 6662 at the time the taxpayer requests relief and the new position requires or permits a regulatory election for which relief is requested. Additionally, if the taxpayer was informed in all material respects of the required election and related tax consequences but chose not to file the election, or uses hindsight in requesting relief, the taxpayer ordinarily will not be considered to have acted reasonably and in good faith. Section 301.9100-3(b)(3).

Section 301.9100-3(c)(1)(i) provides that the interests of the Government are prejudiced if granting relief would result in a taxpayer having a lower tax liability in the aggregate for all tax years affected by the regulatory election than the taxpayer would have had if the election had been timely made (taking into account the time value of money). Likewise, when the tax consequences of more than one taxpayer are affected by the election, the Government's interests are prejudiced if extending the time for making an election may result in the affected taxpayers, in the aggregate, having a lower tax liability than if the election had been timely made.

Further, the interests of the Government are ordinarily prejudiced if the tax year in which the regulatory election should have been made or any tax years that would have been affected by the election had it been timely made are closed by the period of limitations on assessment under section 6501(a) before the taxpayer's receipt of a ruling granting relief under section 301.9100-3. Section 301.9100-3(c)(1)(ii).

The information and representations furnished by A establish that it has acted reasonably and in good faith in this request. Furthermore, granting an extension will not prejudice the interests of the Government. Accordingly, an extension of time is hereby granted under section 301.9100-3 for A to file the necessary Form 970. Specifically, A may file a Form 970 for Year 1 for its inventory, excluding chemicals. This extension

shall be for a period of 30 days from the date of this ruling. Please attach a copy of this ruling to Form 970 when it is filed.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, no opinion is expressed regarding the propriety of the LIFO inventory method used by A, nor is any opinion given as to the correctness of collapsing A's LIFO layers in Year 1.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to each of A's authorized representatives.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Roy A. Hirschhorn
Senior Technician Reviewer, Branch 6
(Income Tax & Accounting)

cc: